In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 755

PLASCO G. MOORE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury-waived trial on stipulated facts in the United States District Court for the Northern District of Texas, petitioner was convicted on ten counts charging the embezzlement, stealing, or unlawful and wilful conversion of moneys belonging to an employee welfare benefit plan, in violation of 18 U.S.C. 664. He was sentenced to concurrent prison terms of thirteen months. The court of appeals affirmed (Pet. App.; 427 F.2d 38).

Petitioner contends that Section 664 requires proof of evil intent (as opposed to mere deliberate misappropriation of funds) and that the stipulation therefore failed to establish the elements of the offense.[1] As held by the court below, which fully analyzed the evidence, whether or not evil intent was an element of the crime, the stipulated facts were "amply sufficient" for conviction.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

OCTOBER 1970.

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[1] Petitioner also argues (Pet. 10) that the stipulation did not show that the embezzled funds were the property of the insurance trust fund rather than the parent company. The stipulation showed that the trustees of the fund had given petitioner, as plan supervisor, authority to calculate the amount of the premium due the insurance carrier as well as authorizing automatic payment of $1,000 per month to pay costs incurred by the company in connection with administering the plan. This authority did not include authority for petitioner to reimburse the company for administrative expenses not covered by the automatic monthly payments. Such authorization had to come from the trustees. Until that time, the sums petitioner received from the insurance carrier in the form of checks payable to the company belonged to the insurance trust fund, just as would a dividend paid by the carrier. See 29 C.F.R. 464.6(b)(2) and 464.7(b)(7).

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